

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 17, 1999
at 3:10 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 539, 3/17/1999; HB 596,
3/17/1999; HB 617, 3/17/1999
Executive Action: HJ 11; HJ 8; HJ 17; HB 429;
HB 96; HB 346; HB 485; HB 539

HEARING ON HB 539

Sponsor: REPRESENTATIVE PAUL SLITER, HD 76, SOMERS

Proponents:

Julie Lapeyre, Governor's Office

Cary Hegreberg, Montana Wood Products Association

Patrick Heffernan, Montana Logging Association

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE PAUL SLITER, HD 76, SOMERS, presented **HB 539** on behalf of the Governor. This bill removes the requirement that the Governor's representative on the Flathead Basin Commission be the Executive Director of the Flathead Basin Commission. The Commission is based out of Kalispell and the Governor's Office is based out of Helena which creates a difficulty for the Executive Director to be in Helena while trying to operate the commission that exists in Kalispell. The Commission has staff that serves under the Governor. This bill would change that so the staff would serve at the pleasure of the Commission.

Proponents' Testimony:

Julie Lapeyre, Governor's Office, stated the bill changes the Executive Director from the Governor's Office and places the ability to the Commission to hire it's own staff. One technical change the Legislative Audit Division indicated when looking through their office, was a requirement for them to establish a special account for the purposes of funds that were statutorily appropriated. The statutory appropriation had been repealed so the account provision requiring them to have an account should be repealed as well. They have an existing account to fund money that comes into the Commission. There is no change in how the Commission is funded so it is just a technical correction.

Cary Hegreberg, Montana Wood Products Association, stated they have member companies in the Flathead area that have been very active in participating in the Flathead Basin Commission. They understand the need for this bill and encourage the committee's support.

Patrick Heffernan, Montana Logging Association, stated the Flathead Basin Commission does good work on water quality monitoring and at the forefront of some of the Total Maximum Daily Load implementation issues as well. They encouraged the committee's support of the bill.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

REPRESENTATIVE PAUL SLITER, HD 76, SOMERS, thanked the committee for the good hearing.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.5; Comments : None.}

HEARING ON HB 596

Sponsor: REPRESENTATIVE ROGER SOMERVILLE, HD 58, KALISPELL

Proponents:

Jim Kembel, Montana Technical Council
Steve Pilcher, City of Billings

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE ROGER SOMERVILLE, HD 78, KALISPELL, showed the committee the Water Quality Division manual which has all the Department of Environmental Quality Water Quality Regulations and Rules that deals with anything in municipalities, subdivisions, and anything that affects water quality in the State of Montana. The bill requests an update to the manual by January, 2000. This manual keeps the private sector updated on the current rules and regulations. He passed out an amendment to go with the bill as per **EXHIBIT(nas60a01)**. Amendment #2 deals with changing the current language which was originally written to meet **CI-75** language.

He referred to Section 2 (3) (a) (b) (c) (d) and stated once a plan has been approved there has been some concern it may take more than a couple of years to get it completely built, get the as-built put together and back to the Department. It has been extended to a three year time period after a set of plans have been approved for that project to be built and with the as-built returned back to the **DEQ**.

The most important part of the bill is page 1, line 19. There is no one in the state looking at new, developmental techniques in how to treat water quality. If there are new systems developed in other states, a contractor or consultant can bring those

things in with the data and have **DEQ** look at them to prove them for use within Montana.

Proponents' Testimony:

Jim Kembel, Montana Technical Council, stated the Council is made up of architects, engineers, land surveyors and landscape architects. They stand in support of the proposed legislation. It is important to have consistency in the review process and, to have that consistency, they need current and complete standards. They encourage the committee's support of the bill.

Steve Pilcher, City of Billings, spoke in support of the bill. Anyone with regulatory experience will confirm that it is easier to regulate an informed community. This bill goes a long way toward ensuring the regulated community has available to them the yardstick against which they will be measured or their activity will be measured. Today's regulations are extremely complex and to have them all in one handy reference manual is immensely important.

Opponents' Testimony: None.

Informational Testimony:

Jan Sensibaugh, Department of Environmental Quality, stated the Department recognizes this is something that should be done. They support the amendments posed as they had concerns about some of the bid process language and the amendments do take care of all of their concerns.

Questions from Committee Members and Responses:

SENATOR KEATING questioned if this information was in their data base? **Ms. Sensibaugh** stated yes and they are starting to put it on their web site. **SEN. KEATING** questioned if they had received their appropriation for their data base? **Ms. Sensibaugh** stated it is still in there so far.

SENATOR GROSFIELD questioned if the 36 month time period referred to on p. 2, lines 28-30, was anywhere else in their statutes? **Ms. Sensibaugh** stated no it is not but it is what is allowed by EPA.

SENATOR GROSFIELD asked if there were other bills dealing with that 36 month mechanism? **REP. SOMERVILLE** stated he was not aware of any other bills at this time.

SENATOR KEATING asked how much expense is involved in this manual update? **Ms. Sensibaugh** stated the current manual was sold for \$40 which was the cost of reproduction and the binder.

Closing by Sponsor:

REPRESENTATIVE ROGER SOMERVILLE, HD 58, KALISPELL, stated he felt the private sector would gladly pay enough money to at least cover the cost of production at least. It would help with open communications between **DEQ** and those in the field if they were all talking off the same sheet of music. It is also very critical to get new systems developed for use in Montana to deal with septic and water quality at the sewage plants. It is critical that there is a mechanism within the laws to allow engineers to bring these new systems in and prove that they work instead of having the regulators reject them simply because they are new systems. This is what you get from the County Sanitarians a lot of times. Therefore, until it is approved by the state, they won't let them use it and then the State does not have anything that gives direction to look at new systems. This will allow them to do so.

{Tape : 1; Side : A; Approx. Time Counter : 4.5 - 15; Comments : None.}

HEARING ON HB 617

Sponsor: **REPRESENTATIVE KARL OHS, HD 33, HARRISON**

Proponents:

Ronna Alexander, Montana Petroleum Marketers Association
Mark Simonich, Director, Department of Environmental Quality and
Petroleum Tank Release Compensation Board Member

Opponents:

Earl Griffith, Professional Geologist and Private Consultant

Opening Statement by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, stated the purpose of **HB 617** is to restructure the membership of the Petroleum Tank Release Compensation Board and also move some staff around. Legislation passed in 1989 to create the Board in response to the

Environmental Protection Act requirement for \$1 million dollars financial insurance from owners of underground storage petroleum tanks. This was funded by 3/4 cent per gallon tax collected with the gas and diesel tax. The purpose of the fund was to be sure these underground storage tanks could be removed. The program is now funding 18 positions in the Department of Environmental Quality and 10 positions under the Petroleum Board. This bill is trying to change the makeup of the Petroleum Board somewhat and move the Board staff into the Department of Environmental Quality in order to downsize. It is the first step in eliminating the program as we know it today.

Proponents' Testimony:

Ronna Alexander, Montana Petroleum Marketers Association (MPMA), stated representatives from industry and a committee from the Petroleum Board started developing more comprehensive legislation in restructuring this program that will try to move the industry toward a privatization program. However, moving toward privatization prompted several questions that could not be answered at this time, i.e. determining the existing liability of the fund and whether or not private insurance would be available for an affordable price. They consider **HB 617** as just a mini-step toward a more efficient program and trying to move toward a privatization of this fund.

The bill changes the structure of the Petroleum Board by removing the Director or representative from **DEQ** as well as the State Fire Marshall's Office. Those positions are being replaced with a representative of the financial or banking industry and an attorney. They believe it would be better to have a full citizen board more like the Board of Environmental Review. There is concern about a conflict of interest when regulated agencies also determine eligibility towards the fund.

By integrating the Board staff into **DEQ**, efficiency and cost savings will be created, the process will be streamlined and communication will be vastly improved among those people that deal with corrective action sites eligible to the fund. They are attempting to alleviate the situation so the tank owner could work with one person. That person would then guide them through the corrective action process and also the reviewing of claims, when eligible for the fund.

They do not believe the Board, which only meets eight times a year, can effectively manage a staff that large anymore.

Mark Simonich, Director, Department of Environmental Quality and Petroleum Tank Release Compensation Board Member, spoke in support of **HB 617** as per **EXHIBIT (nas60a02)**.

Opponents' Testimony:

Earl Griffith, Professional Geologist and Private Consultant, spoke in opposition to the bill as per **EXHIBIT (nas60a03)**.

{Tape : 1; Side : A; Approx. Time Counter : 15 - 47; Comments : None.}

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned how does one know when cleanup is good enough and how to get timely signatures? **Mr. Simonich** stated it is hard to know exactly when clean up is completed and if done timely. Generally they are dealing with contamination underground they cannot see. It is a matter of cleaning up soil, cleaning up groundwater, how far has the contaminant moved, what are the conditions underground and the types of contaminants there. It varies continually site by site. Risk based corrective action is an area he believes will help them reach site closure more quickly. It allows them to determine the appropriate level of cleanup for a given site given the risks involved.

SENATOR GROSFIELD questioned the purpose of using WQB-7 (Water Quality Bureau Petroleum Release Section Technical Guidance Document #7)? Is there a test that covers many of these parameters? **Mr. Simonich** stated when doing a cleanup they would look under WQB-7 specific parameters related to the type of contamination coming from the petroleum tank. There may be a variety of constituents present and they would determine where they were with them and if they are able to meet the standard.

SENATOR GROSFIELD questioned the breakdown of hydrocarbons in the ground. **Mr. Griffith** stated it is a complex problem that deals with the types of chemistry of the groundwater, whether or not there are any organic degraders, certain bacteria and related families, etc.

SENATOR MAHLUM questioned if there was a list of future cleanups to be done? **Mr. Simonich** stated they learn about these sites when an individual owner finds a spill or in doing a dig out of their tanks they find contaminated soil. The Department is then notified there is a release. This past December they received notification of 49 new petroleum releases. During that same month they resolved five releases which were on-going cleanup

actions. In the ten years of this program there have been a total of 3,464 releases. Currently 1,414 of those are active and 2,050 have been resolved. It is hard to estimate what might be out in the future.

SENATOR MAHLUM questioned if a cleanup costs \$100,000, does the owner of the site only pay \$17,500 and the state takes care of the rest? **Mr. Simonich** stated the \$17,500 is like a deductible. The owner has to pay half of the first \$35,000 of the cleanup. They will be reimbursed the additional amount if their site is eligible for reimbursement. If there is a tank on site and the facility had been operated in compliance with the various applicable statutes, then the owner generally would be eligible for reimbursement from the fund for the remainder of the cleanup.

SENATOR TAYLOR questioned how much money it costs to administer this Board? What decisions are the Board responsible for? **Mr. Simonich** stated the bill simply moves the responsibility for providing staff to the Department. That would become the Director's responsibility. Every other area of authority which the Board has currently, remains with the Board. The Department does not take control of the fund. The Department will not have the ability to determine how the fund is spent. The Board will have all the authority to set the rules by which sites can be eligible, the process for claims and whether they will be paid. Staff will make recommendations to the Board just as they do now. The difference will be the Department will be responsible for managing the staff. There is no Fiscal Note attached because there was not anticipated there would be any fiscal impact. It is simply changes overseeing the staff function provided to the Board.

SENATOR TAYLOR stated he was trying to make sure if the Board had closure authority. **SENATOR CRISMORE** stated the Board does not have closure authority, that belongs to the Department.

Closing by Sponsor:

REPRESENTATIVE KARL OHS, HD 33, HARRISON, asked the committee to keep in mind this program may in time be able to be privatized. This is the first step in trying to make that happen by combining the staff to make it run more efficiently. In that way a volunteer Board does not have the duty to manage the staff. He urges the committee's approval.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 14.3; Comments : None.}

EXECUTIVE ACTION ON HJ 11

Motion: SEN. KEATING moved that HJ 11 BE CONCURRED IN.

Discussion:

SENATOR GROSFIELD stated there are six Montana legislators involved in the River Governance group along with people from Oregon, Washington and Idaho. They meet in Spokane this weekend and he feels this bill should be on second reading before they go. The other states in the region are looking at a very similar resolution and that is part of their goal to deal with this area. It is an important resolution.

Vote: Motion carried 9-0. **SENATOR GROSFIELD** will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON HJ 8

Motion/Vote: SEN. KEATING moved that HJ 8 BE CONCURRED IN.
Motion carried 9-2 with Cocchiarella and McCarthy voting no.
SENATOR COLE will carry the bill to the Senate Floor.

EXECUTIVE ACTION ON HJ 17

Motion: SEN. KEATING moved that HJ 17 BE CONCURRED IN.

Discussion:

SENATOR COCCHIARELLA stated she feels these resolutions are mean spirited and accomplish nothing but to make Montana look like anybody in the world.

SENATOR CRISMORE stated a great deal of time and energy has been put into this in their area. Funding has been an issue. It has not been a pleasant situation.

SENATOR KEATING stated the Montana Association of Counties adopted this resolution as well because it does threaten the western half of the state or federal takings. He feels it is a very necessary resolution.

Vote: Motion that HJ 17 BE CONCURRED IN carried 6-5 Roll Call
Vote with Senators Coccharella, McCarthy, Roush, Taylor and

Wilson voting no. **SENATOR KEATING** will carry the bill to the Senate Floor.

EXECUTIVE ACTION ON HB 429

Motion/Vote: **SEN. KEATING** moved that **HB 429 BE CONCURRED IN.**

Motion carried 10-0. **SEN. THOMAS** will carry bill to the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 14.3 - 22; Comments : None.}

EXECUTIVE ACTION ON HB 340

Motion: **SEN. TAYLOR** moved that **HB 340 BE CONCURRED IN.**

Motion: **SEN. TAYLOR** moved that **AMENDMENTS HB034001.ALM BE ADOPTED.**

Discussion:

Mr. Mitchell explained the amendments. They change the term registered surveyor to licensed surveyor in certain places. They specify more clearly in Section 1(1)(b) precisely what has to be done once a monument is proposed or anticipated to be destroyed. There is a more specific duty placed upon a person that plans or anticipates destroying a monument. They must do this recordation process. The other important amendment basically exempts the Department of Highways and Department of Transportation from complying with requirements in (2).

SENATOR GROSFIELD questioned why they do not need to do the recordation process on private land? He said they are excluding the **Department of Transportation** and anybody else has to do it. He is not certain **DOT** should be able to get out this.

SENATOR KEATING stated he suspected **DOT** already does it. When they are planting highways, they are moving monuments and marking along the right of way. He has seen them surveying all the time.

Mr. Mitchell stated the provision he thinks **DOT** objects to is the hiring out or engaging of a licensed surveyor to do this work. They would prefer to leave it to their own devices.

SENATOR GROSFIELD stated he would ask that the amendments be segregated.

SENATOR KEATING suggested the committee hold off on voting right now.

SEN. TAYLOR WITHDREW PREVIOUS MOTION THAT HB 340 BE CONCURRED IN. Action will be taken on the bill Monday, March 22.

EXECUTIVE ACTION ON HB 96

Discussion:

SENATOR TAYLOR referred to line 17 and questioned if the Department could grant an easement across private property in the scenario he presented?

SENATOR KEATING said the Department does not have any authority to grant an easement on private property. In the bill they are talking about access on isolated trust lands and access across the state land.

SENATOR TAYLOR stated they are not talking about access "to" the state land?

SENATOR CRISMORE said two years ago there was a bill for access on forest lands and now they want to expand it to other state lands. Granting access to the Department is not requiring to analyze or consider the potential impact of the activity that may occur on private or federal land.

SENATOR TAYLOR said this is just for access and not for any development? Just a road across state land?

SENATOR KEATING stated this is just talking about reciprocal access. If you let me go across your land to get to my timber, I will let you go across my land to get to your timber.

SENATOR TAYLOR asked if there was any concern for the private property? **SENATOR CRISMORE** stated some wanted to do an analysis of the impact it might have after they crossed and went to somebody elses.

Mr. Mitchell stated this language is identical to subsection 2 of 77-5-115 which is repealed in Section 2. They are moving the language from one chapter to another. His guesstimate is this is a quasi, not required to comply with, **MEPA** requirement.

Motion: SEN. COLE moved that HB 96 BE CONCURRED IN.

Vote: Motion that HB 96 BE CONCURRED IN carried 10-0. SENATOR KEATING will carry the bill to the Senate Floor.

{Tape : 1; Side : B; Approx. Time Counter : 22 - 38; Comments : None.}

EXECUTIVE ACTION ON HB 346

Motion/Vote: SEN. MILLER moved that HB 346 BE TABLED. Motion carried 9-1 with Grosfield voting no.

EXECUTIVE ACTION ON HB 485

Motion/Vote: SEN. KEATING moved that HB 485 BE CONCURRED IN. Motion carried 10-0. SENATOR CRISMORE will carry the bill to the Senate Floor.

EXECUTIVE ACTION ON HB 539

Motion/Vote: SEN. MAHLUM moved that HB 539 BE CONCURRED IN. Motion carried 9-1 with Miller voting no. SENATOR TAYLOR will carry the bill to the Senate Floor.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 3.7; Comments : None.}

ADJOURNMENT

Adjournment: 4:45 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas60aad)